STATE OF MICHIGAN

DEPARTMENT OF LABOR & ECONOMIC GROWTH

OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXX
Petitioner **File No. 85964-001**

v

The Chesapeake Life Insurance Company
Respondent
_____/

Issued and entered
this 23rd day of January 2008
by Ken Ross
Acting Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On October 29, 2007, XXXXX, authorized representative of XXXXX (Petitioner), filed an incomplete request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* After the request was completed, the Commissioner reviewed it and accepted it on December 13, 2007.

The Commissioner notified Chesapeake Life Insurance Company (Chesapeake) of the external review and requested the information used in making its adverse determination. Information from Chesapeake was received on November 5, 2007, and January 2, 2008.

The case presented a medical question so the Commissioner assigned it to an independent review organization (IRO) which provided its analysis to the Commissioner on January 2, 2008.

II
FACTUAL BACKGROUND

The Petitioner had a one year, non-renewable injury and sickness student insurance plan through Central Michigan University that was effective August 21, 2006. The master policy is

issued to the university and students enrolled in the plan receive a brochure that defines their coverage.

The Petitioner sought treatment from the XXXXX health service for painful dry and cracked heels. When a claim for the service was submitted, Chesapeake denied coverage saying the service was for a congenital condition and therefore excluded.

The Petitioner appealed. Chesapeake reviewed the claim but maintained its denial and issued a final adverse determination dated October 12, 2007.

III
ISSUE

Is Chesapeake correct in denying coverage for the Petitioner's July 12, 2007, service?

IV
ANALYSIS

Petitioner's Argument

The Petitioner's authorized representative says the Petitioner sought treatment on July 12, 2007, for dry, cracked heels after she had suffered with the condition for a few weeks. The Petitioner was diagnosed and treated for xeroderma, a disease of the skin characterized by dryness and roughness. The Petitioner's claim for the services was denied by Chesapeake because treatment of congenital conditions is excluded under her coverage.

The Petitioner argues that she did not have a congenital condition. Her physician supports her argument, saying that xeroderma is not always congenital and can have many causes. The Petitioner believes Chesapeake should be responsible for the claim.

The Chesapeake Life Insurance Company's Argument

Chesapeake asserts that its denial of the claim for the treatment of the Petitioner's xeroderma was correct because the Petitioner's coverage does not include treatment of congenital conditions. The coverage brochure says (page 9):

> **Exclusions and Limitations**
> No benefits will be paid for: a) loss or expense caused by,

> contributed to, or resulting from; or b) treatment, services or supplies for, at or related to:
>
> * * *
>
> 2. Congenital conditions, except as specifically provided for Newborn or adopted Infants

Chesapeake said the Petitioner was diagnosed with xeroderma which is a congenital condition according to the International Classification of Diseases guidelines. Chesapeake concluded that under the terms and conditions of the Petitioner's coverage, no benefits are available for the treatment of congenital conditions.

Commissioner's Review

The Commissioner has carefully reviewed the arguments of both parties as well as the documentation and certificate of coverage. In reviewing adverse determinations that involve medical issues or clinical review criteria, the Commissioner requests an analysis and recommendation from an IRO.

The IRO expert reviewing this case is certified by the American Boards of Internal Medicine and Dermatology; is a member of the American Medical Association, American Academy of Dermatology, American College of Physicians, American Society for Dermatologic Surgery, and the American College of Mohs Micrographic Surgery and Cutaneous Oncology; is published in peer reviewed literature; and is in active practice.

Based on the documentation submitted for review, the IRO reviewer said that the service the Petitioner received on July 12, 2007, "was not related to a congenital condition." According to the IRO reviewer, a congenital condition is one that is "present at birth." In contrast, the Petitioner had only had the condition for a few weeks before her office visit. The IRO reviewer went on:

> The medical record provided documents only a single patient encounter. There is no evidence provided to suggest the [Petitioner] received care for a congenital xeroderma. There is no documentation of any such condition in the Past Medical History, nor is there any indication of previous treatment for such a condition. Congenital conditions generally present early in life and are quite evident on physical examination. Within a reasonable degree of medical certainty, by the time a patient reaches the age of 29 years

(as in this case) the diagnosis would be established and treatment would be documented.

The IRO reviewer noted that the claim was submitted with the ICD-9 diagnosis code of 757.39, but based on the documentation provided, more appropriate ICD-9 codes should have been selected to better reflect the condition treated, e.g., 701.1 (acquired keratoderma), 706.8 (dry skin), or 782.0 (pain, parasthesia, and burning). The IRO reviewer concluded there was no evidence to suggest the patient received care for a congenital xeroderma.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner; it is based on extensive expertise and professional judgment. The Commissioner can discern no reason why that judgment should be rejected in the present case. Therefore, the Commissioner accepts the conclusion of the IRO reviewer and finds that the Petitioner's treatment was not for a congenital condition and was therefore a covered service.

V
ORDER

The Commissioner reverses Chesapeake Life Insurance Company's adverse determination of October 12, 2007. Chesapeake shall cover the Petitioner's treatment within sixty days of the date of this Order and shall provide the Commissioner with proof of coverage within seven days after coverage has been provided.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the Circuit Court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.